

**Discussion of Duties of Chapter 11 Debtor in Possession  
under Local Bankruptcy Rule No. 4002-1(b), EDNC**

Local Bankruptcy Rule No. 4002-1(b):

(a) The debtor shall:

- ☐ (1) MONTHLY REPORT: file with the Clerk of Court and serve on the Bankruptcy Administrator, monthly accountings, the first report being due within 30 days after the filing of the petition and subsequent reports on or before the 15th day of each month thereafter. The debtor shall serve all a copy of all monthly reports on the attorney and the chairman for the unsecured creditors' committee. Such report shall provide the following information:
  - A. beginning and ending balance in all accounts;
  - B. receipts from all sources;
  - C. disbursements, classified, including the amounts and dates of deduction and payment of federal and state taxes;
  - D. indebtedness incurred and unpaid and contractual and other obligations assumed;
  - E. beginning and ending inventory; and
  - F. copies of all federal tax deposit forms covered by any report.

COMMENTS:

**The original monthly report is filed with the Bankruptcy Clerk. The debtor shall serve a copy of the monthly report on the Bankruptcy Administrator, the attorney and chairperson of the unsecured creditors' committee and any other parties requesting a copy.** Monthly reports are reviewed by the Bankruptcy Administrator to determine if the debtor is in compliance with the Order Authorizing Operation of Business, if the debtor is operating a profitable business and if the debtor is paying any unauthorized expenses. **The monthly report shall be in the format prescribed by the Bankruptcy Administrator.**

- ☐ (2) BOOKS OF ACCOUNT: close the present books of account as of the close of business on the date on which the petition is filed and shall open new books of account and a bank account in a court approved depository as of the opening of business on the next succeeding business day. In the new books of account, the debtor shall keep proper records of earnings, expenses, receipts and disbursements, and all obligations

incurred and business transactions. The debtor shall preserve proper vouchers for all payments made on account of the disbursements. If the debtor is authorized to use "cash collateral," separate "cash collateral" accounts must be established and maintained pursuant to 11 U.S.C. § 363(c)(4).

#### COMMENTS:

Effective on the date of filing a Chapter 11 petition, the debtor should close all prepetition books of account and records. New books of account and records should be opened by the debtor, as debtor in possession. **It is essential to establish a "bright line" between each of a debtor's prepetition bank accounts and postpetition debtor in possession bank accounts.** Accordingly, all prepetition bank accounts must be closed effective on the date of the filing of the debtor's Chapter 11 petition, and new bank accounts must be opened. At a minimum, these accounts shall normally consist of general/operating, payroll and tax accounts. The debtor's new bank signature cards shall indicate that the debtor is a "Chapter 11 debtor in possession." The debtor should provide the Bankruptcy Administrator with written notification of proof of the establishment of new debtor in possession bank account including copies of the signature cards, and the closing of prepetition accounts within ten days of the filing of the petition. See "Banking Institutions" paragraph 5.

- ☐ (3) **PROOF OF INSURANCE COVERAGE:** keep the property of the debtor insured in a manner and to the extent as may be deemed necessary and prudent with loss payable clauses, in the case of pledged or mortgaged property in favor of the appropriate secured creditors as their interests may appear. Within five (5) days of the filing of the petition, debtor shall file a verified statement or written evidence that worker's compensation, general liability, fire, theft, and motor vehicle insurance are in full force and effect, together with all other insurance coverages normally used in the debtor's operations.

#### COMMENTS:

The debtor should verify that all insurance on estate property is in full force and effect by providing the Bankruptcy Administrator with a legible copy of the declaration page for each policy that discloses the type, nature, extent of coverage and expiration date within five (5) days of filing the voluntary petition. The amount of insurance should be at least the fair market value of the property to be insured. The debtor should notify the Bankruptcy Administrator in writing immediately upon any lapse, cancellation or proposed cancellation of any such insurance coverage.

- ☐ (4) TAX ACCOUNTS: segregate and hold separate from all other funds, all monies withheld from employees or collected from others for taxes, including social security taxes, under any law of the United States or any state or subdivision thereof. The debtor shall deposit the funds so withheld or collected, together with the debtor's share of social security taxes in a separate bank account simultaneously with the collection or withholding. The debtor shall pay from the bank account to the appropriate taxing authority the amounts due at the times and in the manner prescribed by law.

COMMENTS:

The monthly reports are reviewed to ensure that separate tax accounts have been established and that postpetition taxes are being withheld and paid on a timely basis.

- ☐ (5) BANKING INSTITUTIONS: advise the Bankruptcy Administrator within ten (10) days of the filing of the petition, of the name of the bank to be used as the debtor's depository.

COMMENTS:

A debtor in possession should comply with the provisions of 11 U.S.C. § 345 regarding the deposit or investment of estate monies. Verification of all estate funds on deposit and copies of the signature cards should be provided to the Bankruptcy Administrator within three (3) days of the initial deposit in accordance with the Deposit Report Form prescribed by the Bankruptcy Administrator.

- ☐ (6) FILING OF PLAN AND DISCLOSURE STATEMENT: file a plan of reorganization and a disclosure statement within 120 days of the filing of the petition commencing the case.

COMMENTS:

The Bankruptcy Administrator monitors the filing of Disclosure Statements and Plans. Unless the case is designated by the court for accelerated treatment, the debtor is required by this local rule to file a disclosure statement and plan of reorganization within 120 days of the petition date.

- ☐ (7) PHYSICAL INVENTORY: procure a physical inventory, if applicable, upon the filing of the petition and file the inventory with the Bankruptcy Administrator within thirty (30) days of the filing of the petition or such other time as the court may direct.

COMMENTS:

The inventory should include an itemized statement disclosing the value of the inventory at the debtor's cost unless a different basis for valuation is permitted.

- ☐ (8) PROJECTED OPERATING STATEMENT: file with the Bankruptcy Administrator within ten (10) working days of the filing of the petition commencing the case a projected operating statement for the next thirty (30) days of operation under a chapter 11. The statement must contain:
  - A. the estimated costs of operation for the next succeeding thirty (30) days;
  - B. the estimated profit or loss for the period;
  - C. the amount of cash available for the operation;
  - D. how the debtor intends to fund the cost of operation for the next thirty (30) days; and
  - E. any other additional information that is pertinent to determine the desirability of continuing the debtor's business.

- ☐ (9) RELATIONSHIP WITH SECURED CREDITORS AND UNSECURED CREDITORS COMMITTEE: Debtor's attorney shall promptly respond to reasonable inquiries of secured creditors, the unsecured creditors committee, and any court appointed consultant, as well as the Bankruptcy Administrator. The Debtor shall cooperate with the Bankruptcy Administrator's office and the Unsecured Creditors Committee, as well as any court approved trustee or examiner.

b: The debtor shall not:

- ☐ (1) PAYMENT TO PRINCIPALS: prior to confirmation of a plan of reorganization, compensate or remunerate itself, or any of its partners, officers, directors or shareholders in any manner without prior approval of the court. Any application for approval of compensation should set forth the name and proposed position of

the individual sought to be employed along with a detailed description of the duties the individual is to perform, the number of hours each week the individual will devote to those duties and the reasons why employment of the individual is necessary to the successful reorganization of the debtor. Also, the application should set forth the amount of compensation sought on a weekly or monthly basis and disclose all perquisites, benefits and consideration of any kind the individual is to receive, e.g. use of company vehicles, payment of life or health insurance premiums, reimbursement of expenses. The salary history of the individual for the year immediately preceding the filing of the petition shall be disclosed. The application shall be signed under oath.

- ☐ (2) PAYMENT OF PRE-PETITION DEBT: pay pre-petition unsecured debt without approval of the court.
- ☐ (3) EMPLOYMENT AND COMPENSATION OF PROFESSIONALS: The debtor must seek court approval to employ any professional, including attorneys, accountants, real estate brokers, and consultants. The employment must be sought as soon as possible after the filing of the case or before the professional begins to render services to the debtor. The employment procedure is governed by the Bankruptcy Rules and Code. The professional is required to execute an affidavit disclosing any and all connections the professional may have with the debtor, counsel or any party in interest in the bankruptcy case. The professional must disclose the terms and conditions of the proposed employment, including the precise nature of the duties to be performed, together with any financial arrangements with the debtor or third parties.
- ☐ (4) COMPENSATION: No post-petition compensation may be paid to any professional without prior court approval. Compensation is awarded through the fee application procedures set forth in the Rules and Code. All professionals must disclose any compensation paid by the debtor in each application. If the professional is being compensated on an hourly rate basis, the professional must keep time in .1 of an hour increments and in a format prescribed by the Bankruptcy Administrator. Time sheets must be attached to all fee applications.